

CHAPTER 9: IMPLEMENTATION STRATEGY

“We need to acknowledge that people will want to continue living in (a) beautiful valley today, tomorrow & into the future. People have to have places to live, work, shop & play. All this dictates that the valley will continue to grow people, houses, cars, roads & businesses to service this growth. Plan for orderly growth with reasonable laws, ordinances & regulations, keeping in mind people’s private property rights.”

-Lakeside resident, 01/09/06

Introduction

A Growth Policy is a non-regulatory document created to ensure the promotion of public health, safety, morals, convenience or order or the general welfare by defining a community’s goals and policies to reach those goals (76-1-106 M.C.A.). A growth policy is also created for the sake of efficiency and economy in the process of community development (76-1-106 M.C.A.). Similar to the way a state constitution acts as the legal foundation for laws, a growth policy establishes the legal foundation for future planning and land use regulations. When legislators make laws, they do so to implement the constitution. When citizens disagree with laws, they challenge the legality of the laws based on the constitution. Without a growth policy, private landowners have no predictable guidance upon which to base safe and healthy land use decisions and community leaders have no document against which they can compare regulations to ensure legality. A comprehensive Growth Policy therefore protects a community from lawless growth and provides predictability in the development process.

PART 1: Implementation Methods

It is important to bear in mind that a Growth Policy is not a miracle cure for the ills of a growing community. It is also important to note that even the best Growth Policy has no impact if it is not implemented. Implementing a Growth Policy creates predictable regulations to which all residents are equally and fairly subject. In keeping with Chapter 1 of this document, regulations should protect the public health and safety with a minimal impact on personal freedoms. Since 100% personal freedom is essentially lawlessness, a civilized society asks residents to give up certain freedoms in exchange for a healthier, safer community. For example, the right to drive as fast as one pleases is limited for the safety of other drivers. However, a community in which government takes too many freedoms in exchange for very little is not representative of the custom and culture of the State of Montana or the United States of America. Therefore, implementing the Flathead County Growth Policy must achieve a delicate balance. The number of complaints pertaining to growth in Flathead County received during the Growth Policy public involvement process indicates that the existing implementation of the 1987 Flathead County Master Plan is not adequately protecting the public health, safety, morals, convenience, order, or general welfare of Flathead County in 2006.

This chapter discusses various aspects of implementing the Flathead County Growth Policy and proposes techniques that are a reasonable “middle ground” between many competing interests. Just as no Growth Policy is a panacea, no implementation technique is perfect. The implementation tools described in this chapter are reasonable and appropriate suggestions for Flathead County based on countless suggestions received from the public (see Appendix B: Public Involvement Summary). At such time as these techniques are deemed inappropriate or other techniques become more appropriate, amendments to this document to reflect such techniques are encouraged.

Regulatory Implementation

- **Development Predictability Map-** Among the many concerns voiced by residents of Flathead County is the issue of development predictability. Unregulated areas create unpredictable development scenarios that frustrate developers, surveyors, engineers, planners, neighbors and the public. However, zoned areas are sometimes perceived as unfair or outdated. Many residents of Flathead County have expressed that they don’t want development to ruin the environment, be unsafe for children, or be unhealthy for neighbors, but they don’t want any government regulations either. This is a difficult request. A reasonable middle ground appears to be a flexible, county-wide assessment based on the pre-determined impacts to health, safety and general welfare.

The Flathead County Development Predictability Map (DPM) would be created by first establishing a list of spatial criteria relevant to health, safety and general welfare. This list would identify threshold criteria for appropriate densities of development. The criteria used would be available for review and subject to public scrutiny and input prior to being applied to a map. Areas would be designated based on compliance with a certain number of criteria. Future changes, such as construction of a new fire station or new roads could potentially modify the DPM creating flexibility. The criteria, densities and number of categories would all be established during the process. Clustering bonuses could be included for those who contribute to the health, safety and welfare of Flathead County by dedicating as open space critical lands such as floodplains, wetlands, areas of high groundwater, or other critical lands specifically pre-determined in the DPM.

The advantages of a Development Predictability Map would be predictability for landowners, developers, neighbors, and staff as well as flexibility for areas transitioning from rural to suburban. A DPM would focus only on issues truly important to the long-term well-being of Flathead County and not include criteria that unnecessarily infringe on private property rights.

- **Official Maps** - Official maps are used to spatially identify rights of way that must be preserved in a growing community. One of the causes of increased traffic is a static transportation grid that forces more cars onto the same roads. Areas where public utilities should exist to serve the public are identified and

neighbors/landowners can plan accordingly. By planning areas of Flathead County where roads, trails and public utilities should be built to serve a growing community, the acquisition of rights of way can occur over time during the development process, rather than all at once through an expensive and undesirable condemnation process. An official map that plans for essential road, trail and public utility corridors eliminates requests for right-of-way easements on a project-by-project basis. Developers and landowners can consult the “official map” during the project planning process and know if any rights of way will be requested by Flathead County. Standards for county execution of road, trail, or utility construction once a certain amount of right of way is acquired should be included to insure that rights-of-way are used in a timely manner.

- **Market-Based voluntary transfer or adjustment of development rights -** Adjusting “development rights” between pre-determined areas of Flathead County is a valuable way to guide growth to areas more appropriate for higher intensity development and available public services (e.g. fire and sheriff response, schools, etc.) while promoting or protecting valuable sensitive natural resources and areas without a level of adequate public service delivery. Rural, open areas identified as critical to preserving the natural and human environment as well as the character of Flathead County are assigned development rights based on the maximum desirable density of development. Those “rights” can then be voluntarily transferred or adjusted to people developing land in areas suitable for more intensive land uses. Property owners in both “sending” and “receiving” areas benefit by retaining value in their land. Developers benefit with increased flexibility and increased efficiency in the development process. Neighbors benefit through predictable land uses that preserve property values, and the public benefits by preserving open spaces in areas that have always been important to the rural character of Flathead County.

Implementing any development right adjustment system in Flathead County would require careful research and planning to make the system workable and transparent. The value of development rights must be set by the market, and if the market can’t adequately balance the supply and the demand, County government shall not administer the exchange.

- **Neighborhood Plans-** Many neighborhoods in Flathead County struggle with issues that are unique to their area. Issues of paving the North Fork Road or maintaining the character of downtown Bigfork are best left to the residents of those areas and not the County as a whole. Neighborhood Plans are a way for residents to have a plan for their communities that are based on the local custom and culture. It is also important to respect communities that have no desire to create a neighborhood plan. Some communities might feel that each landowner has the right to do whatever they see fit, and these areas will only be required to comply with county-wide standards for public health, safety and general welfare.

Neighborhood plans, as well as subsequent implementation, should be consistent with the goals and policies of the Flathead County Growth Policy. Neighborhood plans in existence at the time of adoption of the Growth Policy can choose to retain existing implementation techniques not specifically covered in this chapter. Neighborhood plans created after adoption of the Growth Policy must choose from the implementation techniques included in this chapter. Neighborhoods may determine the individual standards for each of the implementation techniques chosen, but may not create standards less restrictive than any county-wide standards. Neighborhood plans shall be adopted as addendums to the Flathead County Growth Policy. See Chapter 10 for more on neighborhood plans.

- **Special Consideration Areas-** Areas of Flathead County with unique situations pertaining to the public health, safety and general welfare, will be treated with special consideration. Each area will be delineated using criteria open to public scrutiny and subject to the health, safety and general welfare goals of the Flathead County Growth Policy. Special consideration areas should include (but not be limited to):
 - Glacier International Airport
 - Glacier National Park
 - Gateway areas
 - Flathead County Landfill
 - Floodplain regulations
 - Lakes and Lakeshore protection regulations.
 - Wetlands
 - Critical wildlife habitat (should not prohibit growth, but encourage techniques that allow humans and wildlife to coexist)

Regulations used in “Special Consideration Areas” should be the minimum needed to mitigate the impact of growth and development. Special consideration areas should not be misconstrued to prohibit development in an area, only to create impact-mitigating standards.

- **Zoning-** Areas of Flathead County with densities that make incompatible land uses a public health and safety hazard should be zoned by use. Setbacks, building heights, lot coverages, land uses and other basic criteria deemed appropriate should be established. In areas of low density where land uses have minimal impact on neighbors, land use compatibility regulations are not as important. Land use zoning should enable the co-location of mutually beneficial uses that have a positive impact on health and safety. Residential uses that are located near or within some low-impact commercial uses can effectively reduce traffic and create a greater sense of community.

Land use zoning based on the policies, goals and land use designations contained in the 1987 Flathead County Master Plan and in existence at the time the Growth Policy is adopted will remain in place and will be reviewed in a timely manner for

compliance with the goals and policies of this document. Land use categories should include, but not be limited to:

- Agriculture
 - Timberlands
 - Residential
 - Commercial
 - Industrial
 - Planned Unit Developments
 - Neighborhood plan-specific zoning in existence at the time of adoption of this document. Zoning will be reviewed after the neighborhood plan is revised for consistency with this document and compliance with state law requirements.
- **Subdivision Review-** The subdivision of land in Flathead County is and will continue to be regulated by the Flathead County Subdivision Regulations. Subdivision review implements the growth policy by ensuring healthy, safe and compliant development practices that do not unreasonably impact the residents of Flathead County. Local government review of subdivision is required under 76-3-501 M.C.A. All compliant growth policies in the State of Montana are required to contain statements explaining how the governing body will define the impact of subdivision on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, evaluate and make decisions regarding proposed subdivisions, and conduct public hearings. With respect to the criteria listed in 76-3-608(3)(a)(i-iii) M.C.A.:
 - **How the governing body will define impacts-** Spatial thresholds and criteria will be established and listed to define the impact of both major and minor subdivisions on the elements listed specifically in 76-3-608(3)(a)(i-iii) M.C.A. These thresholds and criteria will be included in the subdivision regulations and subject to public review.
 - **How the governing body will evaluate and make decisions regarding proposed subdivisions-** Each of the thresholds and criteria that are listed as definitions will also be stated as presumptions of impact if the definition is met. All development applications meeting the definitions will be required to prove that the presumed impact does not exist. The governing body will consider the evidence presented by the applicant to prove that an impact does not exist. This predictable and fair method of evaluating and making decisions regarding the impact of proposed subdivisions places the burden of proof on the applicant, not the residents and representatives of Flathead County.
 - **How the governing body will conduct public hearings on proposed subdivisions-** The Flathead County Planning Board, an authorized agency of the governing body (76-1-101 M.C.A.) will conduct public hearings

compliant with the requirements of 76-3-605 Montana Code Annotated. Meetings will be conducted according to Roberts Rules of Order, and will contain the following items, not necessarily in this order:

1. Reading of the public notice for hearing.
2. Approval of minutes.
3. Report by staff.
4. Presentation by applicant/representative.
5. Agency comments.
6. Public comments.
7. Staff/Applicant rebuttal.
8. Board questions of staff, applicant.
9. Motion.
10. Second to motion.
11. Board discussion, questions.
12. Action on the motion.
13. Public comment on any matters not specifically on the public notice for hearing.
14. Old business.
15. New business.
16. Motion to adjourn
17. Second to the motion.
18. Action on the motion.

Fiscal Implementation

- **Capital Improvement Plan-** Flathead County must use a systems approach to identify and prioritize maintenance and infrastructure improvements relative to all other county and regional service delivery programs and needs over time. A comprehensive capital improvement plan (CIP) including, but not limited to buildings, roads, and sewer and water facilities, and/or parks must be created to compare needs with existing and future sources of revenue. Most CIP's are based on performance and identify what improvements and programs are needed to provide a level of service goal or to meet public demands and expectations.

A typical CIP document normally involves both a short term (five year) and long term (total) list of facilities and needs. The CIP is used in annual budget development and to determine funding gaps to maintain a certain level of service or performance. A CIP should also contain an administrative section that prioritizes projects based on the goals and policies of the Flathead County Growth Policy, and a fiscal plan to identify costs for planning, design and construction of each CIP project. Identifying project costs and scales assists coordination of financing arrangements as well as construction timelines. Prioritizing capital projects also aids the planning process by identifying areas that will have infrastructure capacity to accommodate certain types of growth.

- **Impact Fees-** During the 2005 legislative session, Senate Bill 185 was passed enabling jurisdictions in Montana to utilize impact fees to mitigate the actual impact of development on the local infrastructure. Before Flathead County can utilize impact fees, a study must be completed to determine the actual fiscal impact to local facilities and services of each lot in a new development. In order to reach the goals of the Flathead County Growth Policy, impact fees should be assessed that are justified, reasonable and accurate.
- **Special Improvement Districts-** Special improvement districts are a way for the residents who will benefit from an improvement to community infrastructure to pay for the improvement without burdening all residents. The authorization to create rural improvement districts (districts outside of incorporated areas) comes from 7-12-2102 M.C.A. State law clearly establishes the projects and purposes for which improvement districts can be created. Flathead County can create rural improvement districts for infrastructure improvements that will benefit a limited number of county residents and are specifically authorized in 7-12-4102 M.C.A.
- **Tax Increment Financing-** Tax increment financing is an implementation tool that utilizes future revenue generated by a public improvement project to secure up-front financing. Tax increment financing is authorized for a variety of projects in 7-15-4282 M.C.A. and any use of tax increment in rural Flathead County must comply with all relevant state statutes.

PART 2: Timetable for Implementing

A growth policy is a non-regulatory document that requires implementation to be effective. Unless a timetable is established against which Flathead County can measure implementation progress, the growth policy does not serve the needs of a rapidly growing community. All of the implementation techniques outlined in Part 1 were chosen for their ability to be implemented within a reasonable amount of time. The list of projects that should be completed within five years of adoption of this growth policy includes but is not limited to:

- Development Predictability Map.
- Review of all existing zoning districts for consistency with this document and compliance with state statutes.
- Review of all existing neighborhood plans for consistency with this document and compliance with state statutes.
- Creation of official map to identify future road corridors, bridges and trails.
- Identification and protection of special consideration areas.
- Completion of a Capital Improvements Plan.
- Feasibility study of market-based transfer of development rights.
- Other Growth Policy elements as needed.

PART 3: Monitoring Implementation

Implementation of the Flathead County Growth Policy must be monitored if the document is to succeed in serving the public. Monitoring compliance with the goals and policies of the document as well as execution of the implementation timeline is a critical component of the document. The following techniques will be used to ensure the Flathead County Growth Policy continues to change with the needs of the county.

Growth Policy Progress Report

Within 4 years of the date of adoption of this document, the Flathead County Planning and Zoning Office shall prepare a report to the Planning Board and Flathead County Commissioners detailing the status of the Flathead County Growth Policy. Such a report should include at a minimum:

- Updated demographic and housing statistics for Flathead County
- Update of trends identified in the growth policy and consideration of changes caused by implementation of the growth policy or lack of implementation.
- Suggestions for new goals and/or policies to re-direct and modify the growth policy to more accurately reflect the existing situation and trends.
- Success or failure of implementation techniques.
- Suggestions for modifications to goals and policies.
- Proposals for new implementation techniques to adequately meet the goals of the Growth Policy.

Growth Policy Update

Within 1 year of the Growth Policy Progress Report, staff shall prepare a draft revised Growth Policy. The revised Growth Policy should include updated existing characteristics and projected trends. Market fluctuations, environmental events, shifts in custom and culture, and all other changes in the community should be documented. Goals and policies should be revised as needed to accurately reflect the present-day needs of Flathead County. New techniques needed to implement the goals and policies should be included. Implementation techniques no longer relevant or not appropriate to the present-day should be eliminated.

Public meetings shall be held throughout Flathead County to present revisions to the public and gather public opinion. After a thorough public-engagement process, the document shall be forwarded to the Planning Board for consideration (or applicable process determined by state statute). The Planning Board shall consider the revisions and make changes as needed before making a recommendation to the County Commissioners.

PART 4: Growth Policy Amendments

Frequent, minor amendments to the Flathead County Growth Policy at the request of individual landowners compromise the integrity of the plan. Regularly amending the Growth Policy is also an inefficient use of staff resources and does not give the plan

“time to breath.” A plan must be allowed to function as it was intended before an accurate measure of its effectiveness can be made.

However, all plans must have a degree of flexibility. Certain events could potentially create a situation where the goals, policies and/or implementation techniques become so unrealistic or inaccurate as to be burdensome to the public health, safety, morals, convenience, order, or general welfare in the process of community development (76-1-106 M.C.A.). If this occurs prior to the regularly scheduled updates, the following methods shall be used to amend the Flathead County Growth Policy.

Staff Initiated Amendments

In order to continually protect and serve the public health, safety, morals, convenience, order, or general welfare of all the residents of Flathead County, planning staff may, at the request of the governing body, majority vote of the planning board or request of the planning director, initiate an amendment to the Flathead County Growth Policy. Amendments shall be subject to standard public review procedures, including public notice of hearing in a newspaper of record, preparation of findings of fact, planning board hearing and recommendation and decision by the governing body. Amendments shall only be initiated and processed if a direct threat to public health, safety, morals, convenience, order, or general welfare is posed by waiting until the next scheduled Growth Policy update. Findings of fact should be based on the criteria for growth policy amendments found later in this chapter.

Citizen Initiated Amendments

In the 1987 Flathead County Master Plan large portions of the county received land use designations as guidance for future zoning. After 20 years, the document became dated and no longer adequately served the needs of a rapidly growing community. Residents seeking changes to land use designations such as agricultural to residential were forced to apply to amend the land use designation map. “Master Plan Amendments” as they became known were not amendments to the goals, policies and objectives of the plan but rather the land use designations of the map.

The Flathead County Growth Policy no longer contains land use or density maps or any reference to specific properties. Existing characteristics, projected trends, goals and policies are all presented to protect the public health, safety, morals, convenience, order, or general welfare in the process of community development (76-1-106 M.C.A.). Revisions to the growth policy that are initiated to benefit a certain person or special interest group are potentially inappropriate to other residents of Flathead County.

However, circumstances may arise when a large portion of residents in Flathead County feel that the growth policy is no longer adequately protecting the public health, safety, morals, convenience, order, or general welfare in the process of community development (76-1-106 M.C.A.) and the threat is great enough to warrant immediate revisions. If this occurs, a written request for revision may be submitted to the Planning Director, Planning

Board and/or Commissioners. A written request for revision must contain answers to the criteria outlined later in this chapter. The process for such a revision will then follow that listed under “Staff Initiated Amendments.”

Growth Policy Amendment Criteria

The following criteria shall be used when considering amendments to this document:

- Does the amendment affect overall compliance of the growth policy with 76-1-601 Montana Code Annotated?
- Is the amendment based on existing characteristics and/or projected trends that are substantially different from those presented in the most recent update?
- Is a direct threat to public health, safety, morals, convenience, order, or general welfare posed by waiting until the next regularly scheduled growth policy update?
- Does the amendment alter the provisions of any portion of the growth policy and/or create inconsistencies within the document?
- Does the amendment further protect and comply with the seven elements of the public’s vision for the future of Flathead County?
- Has the proposed amendment undergone a sufficient process of county-wide, public participation and review?